

DFE Memorandum of Understanding for Faith Schools A gateway to inequality?

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Introduction

This report was commissioned by the Khalsa Academies Trust in April 2021 in response to two Termination Notices delivered to Sikh schools. We have been asked to independently and fairly investigate these Termination Notices and the circumstances, contexts and decision-making processes surrounding them. We acknowledge here that we are drawing heavily on Harriet Read and Vera Chapiro Bernal's initial report into Faith Schools, delivered in August 2020. This is especially true of the initial sections. Where sections are in blue boxes, this is taken verbatim from this report.

1.1 Background

1.1.1 Faith schools

'Faith schools,' i.e. those which are designated as having 'a faith character', are defined by the UK government, with extreme brevity, as being exempt from the religion and belief provisions of *The Equality Act* (2010) and able to prioritise admissions to members of their own religion in their subscription criteria, but they must (with the exception of grammar schools) offer a place to any child where this is not an issue. Faith schools can have different staffing policies, can decide their own Religious Education curricula, and can have different models of ownership of their school buildings. Additionally, those outside state control such as faith academies do not have to teach the National Curriculum and can further set their own admissions policies (Gov.uk, online, 2021a).

Long, Danechi & Loft (2019) note that the Government funds many different types of faith school and that around 34% (n=6802) of state-funded mainstream schools in England have such a faith designation, the majority of which have a Christian faith designation, but there is also a growing number of schools with other faith designations – including Muslim, Jewish and Sikh.

37% of state funded mainstream primaries have a faith designation, and faith schools comprise 18% of all state funded mainstream secondaries. Church of England schools are the most common type among primary schools (26% of all primaries); Roman Catholic schools the most common at secondary level (9%). Non-Christian faith schools remain very much in the minority: combined, they comprise less than 1% of all state-funded mainstream schools. However, the number of these schools is increasing. Long, Danechi & Loft (2019) state that between January 2007 and September 2017 the number of Jewish schools increased by 12, Muslim schools by 24, Sikh schools by 10, and all 7 of the Hindu schools have opened during this period. Read and Bernal (2020) give a more comprehensive overview of faith schools and their history within UK education, which we will not reiterate here.

1.1.2 Memoranda of Understandings with faith schools

The 2016 *Education and Adoption Act* gave the DfE new powers to intervene more rapidly in schools rated 'inadequate' or 'coasting' by Ofsted. This made it possible to speed up the process of converting failing comprehensive schools into academies by circumventing local consultation and objections, that would have previously delayed the process (DfE 2016). The effects of this act on faith schools was clarified by Memoranda of Understanding (MoU), associated with the Act, passed between the Department for Education (DfE) and the Roman Catholic Church and the Church of England (DfE 2016).

These MoU put in place a high level of cooperation and communication between the DfE and RC and CofE Dioceses. The DfE, represented by Regional School Commissioners (RSCs), is expected to share information with Dioceses at the earliest opportunity about concerns about underperforming schools, maintained church schools converting to academy status, intervention in inadequate local authority maintained church schools, re-brokerage of underperforming RC and CofE academies, and termination notice or termination warning notices to RC and CofE academies. Consent of diocesan representatives is needed for:

- the conversion of RC and CofE local authority-maintained schools to academy status
- RC and CofE schools to become sponsors.
- the finalising of a solution to interventions in Inadequate local authority-maintained RC and CofE schools
- The re-brokerage of underperforming RC or CofE academies

The purpose of these MoU is to preserve the faith designation of a school, and to prevent any dilution at the level of Church governance and involvement prior to any change of RC or CofE school status.

***It is of note, and pertinent to this research and its findings, that no such Memorandum of Understanding exists between the DfE and other faith bodies. In the specific case of the Khalsa Academies Trust, then, there was no such expectation on the DfE to share information, nor to seek the consent of faith representatives before the decisions to convert or re-broker the schools who have been graded Inadequate were made.**

1.2 Research Aims

Based on the previous research of Read and Bernal (2020), which looked more generally at the rates of 'Inadequate' ratings given to faith schools and the subsequent number that were issued with Mind to Terminate Notices, Termination Warning Notices and actual Termination Notices, the specific aims of the research presented in this report were:

1. To investigate the circumstances around the decisions to issue Termination Notices to two Sikh schools after Ofsted Inadequate ratings;
2. To investigate whether these decisions were comparable to decisions made regarding other faith schools from different religious faiths following 'Inadequate' ratings and the issuing of Mind to Terminate Notices or Termination Warning Notices;
3. To investigate whether re-brokerage or conversion are reasonable solutions in these particular instances, following a review of literature and government documentation.

1.3 Methodology

Initially we conducted a literature search, using Google, EPPI, ERIC and WoK. It is immediately apparent that there is very little literature in this field. The combined search terms "Ofsted AND termination" brought up nothing on ERIC, EPPI or the WoK, and nothing useful on Google Scholar – three items to do with Nurseries, and two further papers from 2002 and 2003. Changing the search to include "re-broke*" gave eight 'hits' on Google, two of which were useful, but nothing further on the other sites. Much of this report, then, uses material from the Department for Education (DfE) and other government agencies, rather than academic sources, although reference is made to what little extant literature there is.

We have drawn heavily on the previous research of Read & Bernal (2020) and their analysis on linking data between DfE data on school performance, schools' individual Ofsted reports and letters sent to academies regarding poor performance, using data collected by the DfE and Ofsted, and made available to the public. The way the study linked data allowed for the "creation of a unique dataset on which descriptive statistical analysis could be performed" (Read & Bernal, 2020 p7).

We have used this dataset to create the tables of data presented in sections 2.2 and 2.4.1, and used this as the basis for some of our areas of study. Further, we have compared the publicly available documentation on a sample of the faith schools rated Inadequate by Ofsted and subsequently issued with a Mind to Terminate Notice (MTN) or a Termination Warning Notice (TWN) in the period September 2017-August 2020. This has allowed us to draw comparisons between the schools and identify similarities and disparities.

2 Inadequate faith schools: re-brokerage and conversion

2.1 Ofsted inspections

Ofsted inspects all maintained and academy schools in England, in line with the relevant inspection framework. It also inspects other services, including childcare, social care and further education. Ofsted introduced a new Education Inspection Framework in September 2019 and the new framework has a greater focus on the quality and breadth of the curriculum. The impact this intensified focus will have on the Ofsted inspections of faith schools is an aspect worthy of continued monitoring and research.

As it stands, there are four overall judgements that Ofsted can reach about schools: Outstanding; Good; Requires Improvement; and Inadequate. Inadequate is subdivided into two more categories: serious weaknesses; or requiring special measures. In line with the *Education and Adoption Act 2016*, an overall effectiveness grading of Inadequate for a maintained school triggers the mandatory issue of an academy order. For an academy, being graded Inadequate could result in a transfer to another academy trust if appropriate actions are not taken.

The definition of an ‘inadequate, special measures’ judgement is that the school is “failing to give its pupils an acceptable standard of education, **and** the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school” (School Inspection Handbook, January 2018).

2.2 Inadequate gradings, and potential termination of funding agreements

Where poor or inadequate performance or weaknesses in safeguarding, governance or financial management is identified by an Ofsted inspection, the DfE can notify the academy via the Regional School Commissioners (RSCs).

The Regional Schools Commissioners (RSCs) act on behalf of the Secretary of State for Education and are accountable to the National Schools Commissioner. Each RSC is supported by a headteacher board. ... intervening in maintained schools judged to be inadequate by Ofsted by providing them with support from a strong sponsor.

DfE (2021d) Regional Schools Commissioners. May, 2021 (online).

Below is the key section from the guidance for RSCs on underperformance:

RSC Core Functions

1. Intervening with under-performing academies and free schools to ensure that high quality support is commissioned to improve them quickly

Tackling educational underperformance in academies and free schools

The RSC is responsible for holding academy trusts to account where academies or free schools are underperforming. In cases where formal intervention measures are required, RSCs will take action to address underperformance and bring about rapid improvement. *This may include commissioning appropriate support, issuing a pre-warning notice or warning notice or by terminating the academy's funding agreement, and identifying a new sponsor to take on responsibility for the academy where this is necessary.*

DfE, Regional Schools Commissioners' decision making framework, October 2020, p7.

The text in italics describes the issuing of formal Notices that outline why the school is causing concern and/or breaking its funding agreement. As a result of the Education and Adoption Act 2016, regardless of the terms in an academy's funding agreement, the Regional Schools Commissioner (on behalf of the Secretary of State) can terminate the funding agreement of an academy that has been judged Inadequate. There are three levels of response, and RSCs can use whichever of these they feel is the most appropriate (see Gov.uk, online, 2021b), but they tend to follow in a prescribed sequence.

The least severe of these notices are pre-warning notices called Minded to Terminate Notices (MTN). These require a response within 15 days and are sent to schools where special measures are required to be taken by the academy or the academy requires significant improvement. The required response must detail how a Trust will make necessary changes. If the Regional Schools Commissioner has reason to think that the school does not have the capacity to make improvements, or this is proven to be the case after subsequent Ofsted Section 8 monitoring inspections, the government has the power to close the school or appoint additional directors. An example text from a recent (2019) MTN is given below:

As the Regional Schools Commissioner acting on behalf of the Secretary of State, I need to be satisfied that X Academy can achieve rapid and sustained improvement. If I am not satisfied this can be achieved, I will consider issuing a Termination Warning Notice.

A Termination Warning Notice is the next step, where the RSC feels that the response to the MTN has been inadequate. This is more severe, with a clear understanding that if changes are not implemented immediately and with immediate effect, the school is under threat of losing their funding from the government, leading to closure or re-brokerage. Example texts from two TWNs from 2019 and 2020 are given below:

I received an Ofsted notification dated (date) confirming that ***** Academy was judged to be inadequate and requires special measures. The Trust was issued with a minded to terminate letter, under clause 5B of the SFA, on (date) following which you were given an opportunity to provide information to evidence a plan of improvement. This process and information provided in response to the minded to terminate letter has now been superseded by the inadequate judgment. On the basis of the Ofsted judgment, I am now issuing this Termination Warning Notice under s2A because I have concerns that the trust does not have the capacity to make rapid and sustained improvement, particularly in relation to *****.

As I have received an Ofsted notification dated (date) confirming that ***** was judged to be inadequate and requires special measures, it is my responsibility to consider whether to terminate the funding agreement. As part of this process, I will consider any written representations you wish to make on the matter. As such, I would be grateful if you could provide me with any representations by (date).

Should the RSC feel that the school and its leadership lacks the capacity to implement the changes that are required, even after the TWN, then the school will be issued with a final Termination Notice. This notifies the school, its governors and the Local Authority that the school is to cease operating as it has been. These letters are also copied to the National Schools Commissioner on behalf of the Secretary of State. An example text from a 2019 TN is given below:

I have considered carefully the actions which the Trust has taken in order to secure the necessary school improvement capability and am not convinced that they are sufficiently robust:

- There is no evidence of how the Trust is securing the additional capacity to ensure the necessary improvements in the school take place, for example by bringing in other external capacity apart from the SIP.
- There is no evidence of a plan to address Ofsted's main points regarding strengthening leadership and management, and holding leaders to account.

Consequently, in accordance with section 2A and on behalf of the Secretary of State, I am issuing you with written notice to terminate the Funding Agreement with the ***** Academy Trust, which I expect to take effect on (date)

As you know, ministers have made an in-principle decision to close the Academy, and we have been holding a listening period to gain the views of stakeholders. The listening period ends on (date).

In this context, I would emphasise that termination of a school funding agreement does not necessarily signal closure of the Academy, and I am still considering whether the school could be sponsored by an alternative Trust.

Table 1 displays a faith breakdown of the number of state-funded schools and academies graded as Inadequate in the period September 2017 - August 2020. The chart shows that of 535 schools rated Inadequate, 133 schools had a religious character designation. This included 85 Christian (excluding Roman Catholic) schools, 45 Roman Catholic schools, 2 Jewish schools, 1 Muslim and 2 Sikh schools. No state-funded Hindu, Orthodox Jewish, Quaker or other minority religious schools inspected from September 2017 to August 2020 were found to be Inadequate by Ofsted.

Table 1: the number of state-funded schools rated 'Inadequate' by Ofsted by religion

	No religious character	Catholic	Other Christian	Jewish	Sikh	Muslim	Hindu
2017-2018	173	21	34	1	1	1	0
2018-2019	157	17	40	1	0	0	0
2019-2020	70	7	11	0	1	0	0
Totals	400	45	85	2	2	1	0

2.3 Academy re-brokerage

2.3.1 Maintained schools

Once an Inadequate grading has been given, In the case of maintained schools judged to be Inadequate, Regional Schools Commissioners (RSCs) issue schools with a Directive Academy Order (DAO). This order requires the school to close and re-open as a sponsor-led academy. This is known as 'conversion.' The Department for Education aims for these schools to open as sponsored academies within nine months of the Inadequate rating. However, the process of matching the school to a sponsor and re-opening as an academy can be complicated and take a long time, especially in cases where there are no available sponsors nearby. In August 2019 there were 170 schools still open whilst under a DAO (Gov.uk 2019b).

2.3.2 Academies

In the case of an Inadequate school already in a Trust, the Regional Schools Commissioner may decide that the only resort is to insist that they are 're-brokered'. This term is used where an Academy Trust is asked by the RSC to transfer one, some or all of its academies to a different Academy Trust. The underlying reason for the re-brokerage will normally be as a result of serious concerns about performance at one or more of the academies within the Trust, caused by for example geographical difficulties, a breakdown in the relationship between the academy's local governing body and the main Trust board, or, as is the case in the context we are investigating, as a method of school intervention.

According to the Department for Education, the decision to re-broker is often the final option for the RSC where other methods of intervention, for example issuing warning notices or requesting that the trust seek improvement support, have not worked.

The Regional Schools Commissioner may seek to re-broker an academy as a method of school intervention in three situations:

- 1. the academy is rated as inadequate by OFSTED**
- 2. the academy is ‘coasting’**
- 3. the trust has failed to comply with a Termination Warning Notice (TWN) issued under its funding agreement**

2.3.3 Headteacher Boards

Headteacher boards (HTBs) are responsible for advising and challenging Regional Schools Commissioners on academy-related decisions. Each RSC is supported by their own HTB for their region. The role of HTB members is to provide advice, scrutiny and challenge to the RSCs’ decision making (DfE, 2020a). One aim of the HTB is to allow a level of transparency to their decision-making process and as such they publicise their meeting agendas and meeting notes onto the Gov.uk, online 2021c. We return to HTBs with regards the Khalsa Secondary Academy in section 4.3.

2.4 Numbers of schools re-brokered or converted

The following tables (tables 1-3) show how many inadequate schools were re-brokered or converted in the academic years 2017-8, 2018-19 and 2019-20 broken down by school type and faith. As outlined in section 2.1, no state-funded Hindu, Orthodox Jewish, Quaker or other minority religious schools inspected from September 2017 to August 2020 were found to be Inadequate by Ofsted.

2.4.1 Inadequate faith schools

Read & Bernal (2020) have an excellent analysis of DfE and Ofsted data showing in detail the numbers of state-funded schools with a faith designation that were rated as Inadequate in the period September 2017 – August 2020, and the numbers that have been converted or re-brokered. We do not want to repeat this available data, but highlight below the key findings in Table 2.

Table 2: the number of faith schools graded Inadequate, and the numbers that converted to Academies and were re-brokered, Sept 2017 – Aug 2020

	Catholic	Other Christian	Jewish
Number of schools graded inadequate	45	85	2
Number of schools converted	14	43	1
Number of schools re-brokered	0	6	0
Total	14	49	1
percentage converted	31%	51%	50%
percentage re-brokered	0%	7%	0%

Please note this table excludes data from the year 2019-20, since many of the schools judged inadequate during this period may still be in the process of re-brokerage or conversion, especially in the light of the pandemic.

A total of 58% of Christian (excluding Roman Catholic) schools judged Inadequate since September 2017 have been re-brokered or converted, and 31% of Roman Catholic schools judged Inadequate since September 2017 have been re-brokered or converted. **It is worth noting that not a single Inadequate Roman Catholic academy has been re-brokered in the last three academic years.**

2.4.2 Inadequate Sikh schools

Our analysis of DfE and Ofsted data shows that in the same period, 2 state-funded schools with a Sikh religious designation were graded Inadequate by Ofsted. The outcomes of the RSC decisions on re-brokering were the catalyst for the commissioning of this report, and we will return to these schools in Section 4.

2.4.3 Inadequate non-association independent faith schools

Whilst not included in the sample for this study, it is worth noting the inspection outcomes for non-association independent faith schools. Ofsted inspects roughly half of independent schools in England. According to Ofsted (2017 p. 62): *“inspection outcomes for independent faith schools remain substantially weaker than independent non-faith schools... Nearly a quarter of all faith schools were judged inadequate at their most recent standard inspection”*. Also, there is variation across the different faith groups. Less than 50% of Jewish schools were judged Good or Outstanding at their most recent inspection compared with 63% of Christian schools and 52% of Muslim schools (Ofsted 2017).

2.5 Research into the issues of faith schools and re-brokerage

Underlying this research and the necessity for it is the assumption by Ofsted, the DfE and the government that re-brokering works, but there are grounds to challenge this.

As described earlier, there is very little research in any of these areas. The number of schools rated Inadequate is a small percentage of all schools, and the number of academies that eventually get re-brokered is even smaller, and the numbers of these that are faith schools is smaller yet: down to the statistically insignificant: of the 21,776 state-funded schools, 871 – just 4% – are rated Inadequate, and less than a quarter of these are designated as having a religious character. When it comes to the individual faiths, the numbers become almost useless to draw conclusions from. The little research that is available is inconclusive at best. There is no clear evidence, for example, that re-brokering schools makes any difference.

Andrews (2018, online), for example, writing for the Educational Policy Institute, found that **“schools that have moved trusts tend to achieve lower outcomes than other schools** and are less likely to be amongst the highest performing schools. The group of schools that have moved trust at some point achieved an average Progress 8 score of -0.2, meaning that **they achieve around a fifth of a grade lower than pupils with similar prior attainment** nationally.” As he notes, however, this result cannot be taken as a reflection on the effectiveness of the re-brokerage policy: “In a lot of cases, academies were moved precisely because they were underperforming so it is not surprising to see that they have results that are below average.” His conclusion does not help further the DfE cause: **“a more detailed analysis is needed** before we are able to draw a causal link between re-brokerage and improving outcomes, **particularly as schools with low outcomes tend to achieve the greatest improvements regardless of intervention.**”

Further to this, the Education Select Committee minutes from 27th February 2017 (Parliament.uk), when discussing the performance of multi-academy trusts, note that re-brokerage should be applied “where school leaders with a track record of success can apply proven models to improve performance” but that “of the 277 academies rated as Inadequate from 2010 to 2015, just 84 have been re-brokered”. As at 4 January 2017 there were 41 academies in the process of being re-brokered. Of these, 31 are as a result of intervention action on the part of the Regional School Commissioner (RSC).

David Moran from E-Act spoke to the Select Committee of his first-hand account of the re-brokering of schools from his trust: “I think the timing of re-brokerage is critical. **The impact on the culture within the organisation during that re-brokerage period was difficult at the school level for individual teachers, principals and parents.** There was the sense of not knowing what was happening and who they were going to, and there was the question of the sensible timing of when that information is shared and how that process happens.”

Lucy Heller, Chief Executive of Ark Academy Trust, was “critical of the Department’s focus on a ‘swift transfer’ from one school to another.” Professor Merryn Hutchings told the Committee that “the re-brokerage process is still an unknown and that **we have little evidence on how successful re-brokering is for under-performing schools.**” She expressed particular concern for schools which are “constantly re-brokered.”

Ehren & Godfrey (2017) discuss five academies that were eventually re-brokered into new Trusts following poor results from Ofsted inspections and the subsequent monitoring visits. They note that the views of the RSC were central to these decisions. According to the headteacher of one of the schools being re-brokered, the **analysis of the RSCs did not always offer “the best solution”** as the RSC would only look for a ‘safe option’ in choosing one of the larger MATs, instead of going for a smaller local alternative of a small MAT that had similar systems in place. The Headteacher feels her school was pushed into another large MAT and now has to start over in implementing new systems which she describes as ‘a setback’” (Ehren & Godfrey, 2017, online).

Ehren & Godfrey (2017) further discuss **the need for greater clarity in these procedures, particularly of the criteria used to re-broker schools.** Simon, James and Simon (2021) indicate from their research data that **the processes for brokering and re-brokering underperforming schools to sponsoring academies lacks transparency.** Although there is a framework for Regional School Commissioners’ decision-making (DfE, 2020b), there is no guidance on the level of Notice they should issue in specific circumstances. We return to this in several sections. In the light of our previous discussion on the Memoranda of Understanding and the concerns we express in Section 3.1 about the levels of security seemingly enjoyed by Church schools through these MoU, **we concur with this call for greater clarity, and add our own for greater understanding of the seeming lack of equality for all schools** whose Trusts do not have such an MoU with the DfE.

3. Inadequate faith academies: notices from the Department for Education

3.1 Notices and Church of England and Catholic academies

The Memoranda of Understanding agreed between the DfE and the Church of England (CofE) and the Roman Catholic Church (RC) outline the protocol for issuing a termination warning notice or termination notice to these types of faith academy. Where the Regional Schools Commissioner intends to issue one of these Notices, it must first notify the CofE or RC diocesan representatives of their intention to issue, and include their reasons for doing so. After being

notified, **church representatives have the opportunity to review the contents of Notices, and present all the actions they intend to take in order to remedy the failings of the relevant academy.** The RSC will then look at the proposals for actions put forward, and based on those proposals, will decide whether to take action.

Faith schools without an agreed MoU with the Department for Education (e.g. Jewish, Muslim, Sikh, Hindu and others) receive Notices from the DfE in the same way as academies with no designated religious character. The extent to which the agreed MoU for CofE and RC schools affords a level of protection against academy re-brokerage in comparison with other faith schools is something which was highlighted by Read & Bernal (2020) as needing to be further researched. **We also believe that this is something that may be worth further discussion within the DfE, as it may lead to misconstrual and misconceptions around equality and discrimination.**

3.2 Memoranda of Understanding

As set out in the Education and Adoption Act, regardless of the terms in an academy's funding agreement, the RSC (on behalf of the Secretary of State) can terminate the funding agreement of an academy that has been judged inadequate. This is a power rather than a duty, meaning the RSC may decide to implement other measures to improve the school, rather than terminate its funding agreement, to bring about a change of trust, for example, where a change of academy trust would prevent the consolidation of improvements in a school. [...]

When an academy has been judged inadequate, the RSC may identify a new academy trust to take on responsibility for the academy, and will enter into a new funding agreement in respect of that academy (this is sometimes referred to as an academy transfer). RSCs will assess these cases on an individual basis, and may not effect a transfer. If the academy that was judged inadequate was previously a 'standalone' academy, this will generally mean it will join a strong trust that has been assessed as having the capacity to improve the school. The academy will continue to function, and the RSC and the new academy trust will work to ensure minimal disruption to pupils' education during the transition. In some exceptional cases, where the academy is not considered viable in the long term, the RSC can move to terminate the funding agreement in order to close it.

The Commons briefing paper on Schools Inspections in England refers to this same text, and notes that "local authorities have no general power to intervene in academy or free schools rated inadequate. However, the Education and Skills Funding Agency (ESFA), the Regional Schools Commissioner (RSC) or the Secretary of State for Education may intervene in these schools" (Roberts & Hill, 2020, p13). Interestingly, this paper makes no mention of the Memoranda of Understanding that exist between the DfE and the Church of England and the Roman Catholic Church (DfE, 2016a and b). It does refer to the Schools Causing Concern document (DfE, 2019), wherein we find:

The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements safeguard the religious character and ethos of such schools, working closely with the relevant religious body. For all Church of England and Roman Catholic schools, this guidance should be read alongside the relevant Memorandum of Understanding, which describes in further detail how RSCs and dioceses will work together to address underperformance concerns in those schools.

DfE, Schools causing concern, September 2019, p11.

These Memoranda each discuss what intervention following an Inadequate grading will look like. In the case of local authority maintained Catholic schools, the RSC “**will contact the Diocesan Schools Commissioner at the earliest opportunity, to discuss with the Diocese an appropriate solution**, recognising the additional legal duties which are imposed when an Academy Order is made”, and “**any solution regarding the appropriate support to be provided will be arrived at following full consultation and with the agreement of the Diocese**” (DfE 2016a, p9). There is a clear acknowledgement that **any solution must ensure the protection of the religious character of the school**, and that **the Catholic Church must retain control of governance**, in accordance with canon law. The DfE also acknowledges that sponsorship arrangements following the mandatory academisation after an Inadequate grading must ensure that control of the school, particularly through the governance arrangements, remains with the Catholic Church. The wording is very similar for the MoU signed with the Church of England.

“Where a sponsored Catholic academy is underperforming and, in the view of the RSC, requires urgent remedial action, the **RSC will engage with the Diocese, through the Diocesan Schools Commissioner at the earliest opportunity**” (DfE 2016a, p9). The first choice would be for another Diocesan or strong Catholic school-led MATs with capacity to take on a Catholic school that needs re-brokering. If this is not possible, the RSC will work explicitly with the Diocese to agree alternative arrangements but **will ensure that the control of the school remains with the Catholic Church** at all times. Again, this is very similar to the CofE MoU.

As soon as any concerns have come to the attention of the RSC which might lead to the issue of a Termination or Termination Warning Notice to the governing body of a maintained Catholic school **the RSC will engage with and consult the Diocesan Schools Commissioner**. This is to allow for **action to be taken by the Diocese, as necessary, to avoid the need for any notice to be served**. It is similar for the Church of England, as below:

Where the RSC issues a Termination Notice, or a Termination Warning Notice to a church academy (in accordance with the process set out in the academy’s funding agreement with the Secretary of State and as set out in any Church Supplemental Agreement) the RSC will notify the DBE of their intention to act, and their reasons for doing so. **The RSC will then allow the DBE a reasonable opportunity to make representations, including describing any actions the DBE intends to take to remedy any failing of the academy**, to which the RSC will have due regard before finally taking any action.

DfE, Memorandum of understanding between the National Society and the Department for Education, 2016, p10

It is clear from these MoU, then, **that Church schools enjoy a level of protection and an extra layer of support where the Diocese can step in and offer remedial action** on behalf of the school that is **not available to non-Church schools** and, crucially in this instance, other faith academies.

Even if the remaining minority faith schools banded together (which is problematic in several ways), and found a voice (we would envisage further difficulties here in having a coherent and agreed voice) **we imagine they would still be too small a group for the DfE to enter into a MoU with**. This again is problematic.

There is also the issue of the protection of the religious character of the school during re-brokerage, which we will return to in section 4.3.

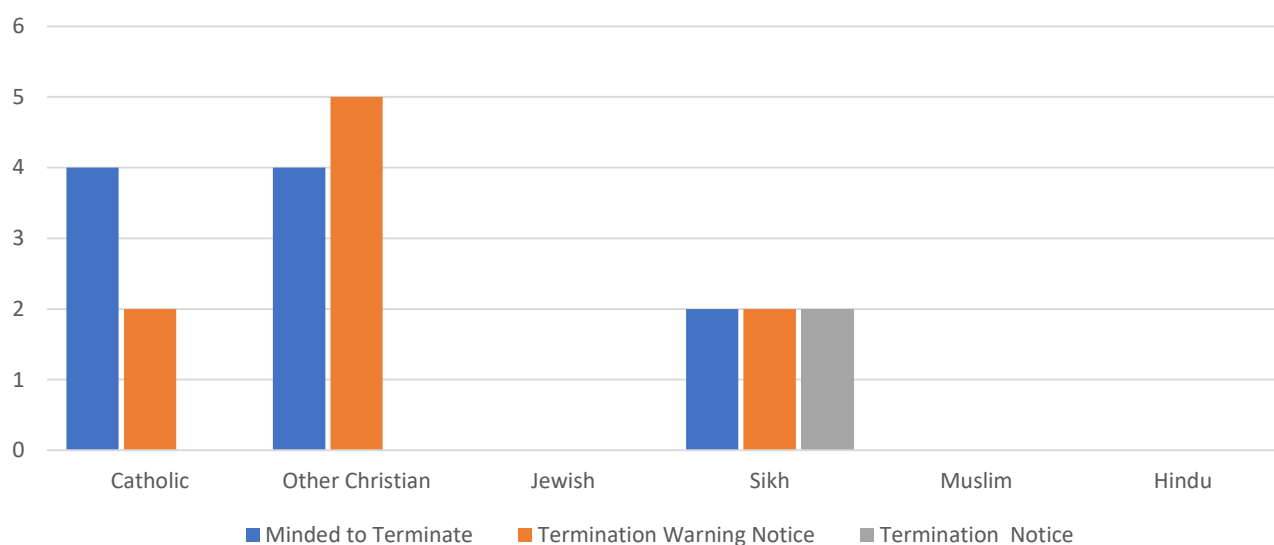
3.3 Notices issued to inadequate faith academies Sept 2017-Aug 2020

The Department for Education issued a total of **21 Notices to faith academies graded Inadequate** by Ofsted in the period September 2017 to August 2020. As demonstrated in Figure 2, 6 of these notices were sent to Inadequate Roman Catholic academies, 9 were sent to Inadequate Christian (excluding Roman Catholic) academies, and 6 notices were sent to Inadequate Sikh academies. No Jewish or other minority religious academies received any notices.

The least severe notices, the pre-warning Mild to Terminate Notices were the largest number of notices issued in this period, with 4 sent to Inadequate Roman Catholic academies, 4 to Inadequate Christian (excluding Roman Catholic) academies and 2 to Inadequate Sikh academies. A total of 9 Termination Warning Notices were sent to schools, with 2 sent to Inadequate Roman Catholic academies, 5 sent to Inadequate Christian (excluding Catholic) academies, and 2 sent to Inadequate Sikh academies.

Only two Termination Notices were issued to Inadequate faith academies in the period September 2017 – August 2020. These Termination Notices were both sent to Sikh schools. No other termination notices were sent to any other faith academies in this same period. Figure 1 shows the Number of inadequate faith academies issued with DfE notices in the period Sept 2017- Aug 2020:

Figure 1: Number of inadequate faith academies issued with DfE notices in the period Sept 2017- Aug 2020



3.4 Notices issued during the UK lockdown period March-July 2020

During the lockdowns forced by the Covid-19 pandemic between March and July 2020, the Department for Education sent Notices in relation to poor or inadequate performance, or weaknesses in safeguarding, governance or financial management to **8 academies**: 4 schools were sent Minded to Terminate pre-warning notices, and 3 schools were sent Termination Warning notices. Only one school, Khalsa Secondary Academy, received the DfE's most severe notice, a Termination Notice. **Of the 8 schools which received notices during the period March to July 2020, Khalsa Secondary Academy was the only school to have any designated religious character.**

4. The treatment of Sikh schools

Figure 2 demonstrates the outcomes of all decisions on Termination Notices sent to faith schools in the period September 2017 – Aug 2020.

Figure 2: summary of DfE decisions regarding Termination Notices by faith schools

Number of State-Funded Schools rated as 'Inadequate'						
	Catholic	Other Christian	Jewish	Sikh	Muslim	Hindu
2017-2018	21	34	1	1	1	0
2018-2019	17	40	1	0	0	0
2019-2020	7	11	0	1	0	0
Total	45	85	2	2	1	0
% of schools rated Inadequate as % of total faith schools by religion and period Sept 2017 – Aug 2020						
	Catholic	Other Christian	Jewish	Sikh	Muslim	Hindu
	2%	1%	4%	15%	3%	0%
No of Inadequate Faith Academies issued with DfE notices in period Sept 2017 – Aug 2020						
	Catholic	Other Christian	Jewish	Sikh	Muslim	Hindu
Minded to Terminate	4	4	0	2	0	0
Termination Warning Notice	2	5	0	2	0	0
Termination Notice	0	0	0	2	0	0
*Note MTT/TW/TN figures do not include maintained schools that were converted/re-brokered						
% of schools judged Inadequate that were issued with a TWN/TN						
	Catholic	Other Christian	Jewish	Sikh	Muslim	Hindu
Minded to Terminate	8.9%	4.7%	0.0%	100.0%	0.0%	0.0%
Termination Warning Notice	4.4%	5.9%	0.0%	100.0%	0.0%	0.0%
Termination Notice	0.0%	0.0%	0.0%	100.0%	0.0%	0.0%

4.1 A Sikh Academy, and a Roman Catholic Academy: a direct comparison of Ofsted comments

The following table gives the opening remarks from two Inadequate gradings within two months of each other – the Khalsa Secondary Academy (a Sikh school) in early December 2019 and the de la Salle Academy (a Roman Catholic school) in January 2020. A further discussion follows. Throughout the table, positive remarks are in normal font and negative are in italics, and in the following discussion, as above, key points are in bold.

De la Salle Roman Catholic Academy	Khalsa Secondary Academy
<p><i>Pupils have been failed for far too long at The De La Salle Academy. Leaders and trustees have not done enough to improve the school.</i></p> <p><i>Across the school, pupils' achievement is exceptionally low in too many subjects. Current pupils have extremely wide gaps in their knowledge and understanding. Leaders and teachers do not expect enough from pupils.</i></p> <p><i>Pupils have very weak mathematical skills. In 2019, pupils' attainment in mathematics declined to an all-time low. Current pupils are not faring any better.</i></p> <p><i>Owing to financial issues, too many pupils have experienced a very narrow curriculum. Although art, drama, geography and technology have now been reintroduced, many pupils missed out on learning these subjects from Year 7. Music is still not offered.</i></p> <p><i>There is a deep-rooted culture of poor attendance, particularly for disadvantaged pupils and pupils with special educational needs and/or disabilities (SEND). This prevents these pupils from learning and achieving well.</i></p> <p><i>Pupils' behaviour has improved over time. Leaders have successfully established a culture where pupils can now learn. Relationships between teachers and pupils are positive. However, some pupils do not behave well at social times.</i></p> <p><i>Pupils told us that bullying is dealt with effectively and that they feel safe. Pupils appreciate the extensive range of extra-curricular opportunities on offer, including sports, chess and the cadets. They enjoy taking part in charity work and educational visits. Pupils' personal development is very strong.</i></p>	<p>Many pupils are very happy at Khalsa Secondary Academy (KSA). Pupils typically work hard at KSA, enjoy their time there, and feel safe. <i>However, leaders have not made sure that pupils are safe. Leaders at trust and school level have not followed essential safeguarding processes when recruiting staff.</i> The designated safeguarding leads (DSLs) care about pupils <i>but have not helped some vulnerable pupils as quickly or effectively as they should.</i></p> <p>Leaders express high ambition for pupils and, overall, pupils do well in their GCSEs. <i>However, some pupils with special educational needs and/or disabilities (SEND) do not do well because they do not get the support that they require. Teachers do not know what pupils' specific needs are and so do not make adjustments for them. Some pupils with SEND do not have access to the range of subjects available to others.</i></p> <p><i>Pupils focus on GCSE examinations from Year 7. They follow a reduced two-year key stage 3. This does not provide them with similar breadth of learning to the national curriculum.</i></p> <p>Pupils behave well and are polite and welcoming to visitors. They do not see bullying as an issue and feel that the school deals well with any instances that arise. Pupils appreciate the wide range of enrichment activities which teachers put on for them. Those who are elected to the school council are proud to represent their peers.</p>

It should be immediately apparent which is a worse place to be taught. The report for de la Salle continues, "Since the previous inspection, leaders and trustees have **failed to address all of the areas for improvement left at the last inspection**. They have **not demonstrated the capacity to improve the school** at the pace required. In particular, leaders have been **unable to improve pupils' academic outcomes**. **Pupils' achievement across the school is exceptionally poor**. **The achievement of disadvantaged pupils and pupils with SEND is unacceptable**. In 2019, hardly any disadvantaged pupils achieved a standard pass in English, mathematics or science. Pupils with SEND achieved equally poorly..."

The report for the Khalsa Academy also lists a series of faults, but some of these are acknowledged to be recognised and beginning to be dealt with:

- The special educational needs coordinator (SENCo) **is aware that** the school's approach to identifying additional needs is not effective.
- There is no library, **so English teachers have created classroom book boxes with their own** and donated books. However, these are of varying quality and are uninspiring. **To address this gap in provision**, subject leaders have constructed a reading list, delivered assemblies about reading and arranged commercial book fairs at school. They plan to introduce further resources in 2020 but **recognise this is currently a significant gap** in provision for pupils.
- **Leaders at the school are working hard.** Many have stepped up to try to fill gaps in leadership. However, they do not have the training or support that they need to be effective in these roles.

Two key areas in which the Khalsa Secondary Academy was found to be inadequate by Ofsted were regarding its Safeguarding policies and processes, and Leadership and Management, with clear areas of concern identified by Ofsted, and extremely clear guidance given as to how to improve these fundamental areas.

The RSC were first involved in talks with the Khalsa Secondary Academy towards the end of October 2019 and were subsequently issued with a **Minded to Terminate Notice** on the 2nd December 2019. The following day an inspection was carried out by Ofsted and this resulted in an **Inadequate** rating. On the basis of this rating the RSC then issued a **Termination Warning Notice** on the 18th February 2021. Although supporting evidence was submitted to the RSC by Khalsa Secondary Academy regarding progress made in response to the Ofsted report, the RSC dismissed this and further issued a **Termination notice** on the 4th June 2021. We also note that that an Ofsted section 8 monitoring visit was carried out remotely on the 20th November 2020 and reported that **"We did not find any significant concerns during the visit"**. (the remote inspection letter of 4th December 2020 available here: <https://files.ofsted.gov.uk/v1/file/50158385>).

The de la Salle Academy also received the lesser **Minded to Terminate Notice** despite its seemingly larger set of failings. Hill (2008) and Greany & Ehren (2016) have written of **the need for greater clarity as to the criteria for the decisions around the levels of Notice that are sent to schools**. Is there clear guidance for RSCs, or is the decision entirely at their discretion? Is Safeguarding the trigger for the higher level of notice? It would seem not, as the Notice sent to the Saint Augustine Webster Catholic Voluntary Academy in North Lincolnshire in October 2020 specifically mentions Safeguarding as its primary concern, yet this is the lowest severity Notice. We note that the concerns raised about Safeguarding are not as pronounced as those at KSA, but we reiterate a call for clarity here. We also note Leadership and Management is also highlighted as a failing at de la Salle Academy but no further Notice has been issued to them.

Furthermore, the MTN to de la Salle Academy prompted by an **Inadequate** grade given in January 2020 follows a previous **Inadequate** grading given in October 2017. **If the school had**

failed to make progress in those 26 months, giving it the lowest warning seems hard to justify. What factors prompted the RSC and the DfE to respond in this way? Has the Memorandum of Understanding prevented a different judgement being made, despite the lack of progress in the period in question?

As we noted in Section 2.5, we cannot be sure that re-brokerage is effective in raising standards, but even if that were proven **we are concerned about the consistency of approach from Regional School Commissioners.** There is no way of judging this, given such small statistical numbers, but the Termination Notices given to KSA seems an extreme reaction when compared to the de la Salle Academy. **We have found no clear guidance for RSCs to support their decision-making processes** beyond the simple framework already discussed (DfE, 2020b), nor for the HTBs that exist to “advise and challenge RSCs on the decisions they make” (Academy Ambassadors, 2021). **We suggest that, if this exists, it is shared with schools and the educational establishment more generally.** There is no research into the levels of subjectivity and context in these re-brokerage decisions, but there is a reasonable body of literature about subjectivity and Ofsted inspections (e.g. Ball & Olmedo, 2012; Ball, 2016) on which we can draw to raise similar concerns about the re-brokerage process.

4.2 Questions following this discussion

We are left with a series of questions which we feel need answering. Our strong suggestion would be for greater clarity around these areas to anticipate and disarm any accusations of discrimination, inequality and lack of representation.

1. What guidance do Regional Schools Commissioners receive to support their decision-making processes regarding the level of Notice to serve schools with an Inadequate grading?
2. Is Safeguarding alone the key trigger for a Termination Notice?
3. To what extent do the Headteacher Boards have any influence on these outcomes?
4. How is parity ensured between regional Headteacher Board decisions in the different regions? Is there training given or guidance issued to these bodies?
5. How representative is the composition of the RSC body? Does it reflect the diversity in the UK and the local communities which they serve? How well do the eight members understand the nuances of faith on which they make decisions about potential sponsoring MATs?
6. To what extent do the Memoranda of Understanding protect failing Catholic and CofE schools from the re-brokerage process?

4.3 Keeping the religious character of Khalsa Secondary Academy

Should the re-brokerage of KSA be forced through, despite the aforementioned Ofsted remote visit in November 2020 finding no significant concerns, we feel it imperative to raise the issue of the keeping of the religious character of the school. As noted above, the DfE (2020c) report on Schools Causing Concern states that “The Government is committed to protecting the ethos of schools with a religious character, and RSCs will ensure that their intervention arrangements safeguard the religious character and ethos of such schools, working closely with the relevant religious body” (p.11) however, the Regional Schools Commissioner has indicated that KSA is to be taken over by the Sikh Academies Trust. This is of grave concern to the Khalsa Academies Trust for reasons of **nuances of faith that we feel are overlooked or inadequately understood**. At the very least, not enough consideration seems to have been given to these concerns. It is notable that the RSC decision-making framework (October 2020) has no mention or stated provision for such nuances in faith. **We suggest that this should always be an item of discussion with Trust boards in these situations** so as to avoid unnecessary distress.

The Regional Schools Commissioner has indicated that KSA is to be taken over by the Sikh Academies Trust. This is of grave concern to the Khalsa Academies Trust for exactly these reasons of **nuances of faith that we feel are overlooked or inadequately understood**. At the very least, not enough consideration seems to have been given to these concerns. **We suggest that this should always be an item of discussion with Trust boards in these situations** so as to avoid unnecessary distress.

The issue in this specific circumstance is that we have been informed that the sponsoring school that is looking to receive KSA and its larger Trust are run by Sikhs affiliated to the Akhand Kirtani Jatha (AKJ). This is a separate *jatha*, or collective group, of Sikhs perhaps best understood as a sect. Whilst describing itself as fully aligned with the *Khalsa Panth*, there are nuances of faith between the AKJ and what might be described as mainstream Sikhism.

This is not the place for a theological discussion; the point is rather that the Board of Trustees at the Khalsa Academies Trust feel that moving the school to a Trust affiliated with the AKJ would be grossly inappropriate. Whilst not a direct comparison, it would be obviously inappropriate to expect a Sunni-aligned academy to join a Shia Trust, or a Catholic school to be forced to merge into, or be sponsored by, e.g. a Methodist Trust. The Khalsa Academies Trust suggest that what is being suggested here amounts to a similar situation. This raises the question of the level of local, contextual and religious knowledge of the Regional Schools Commissioner whose task it is to decide on the sponsors of failing schools needing re-brokerage. What support do they receive in these areas? **We strongly suggest that investigations should be opened into local contexts in re-brokerage situations, especially where schools with a distinctive religious character are involved**, at the very least gathering Trust, public, parental and staff opinions.

We feel it appropriate here to again raise the question of the diversity and levels of **representation within the eight-person membership of the RSC body**, and ask whether they could be better supported at local and national level with faith group representation in an advisory capacity – **perhaps a specific Advisory Board could be drawn together at need** in situations like this. The Network of Sikh Organisations (www.nsouk.co.uk) run by Lord Singh has been at the forefront of opening and supporting Sikh faith schools. They supported Guru Nanak School in Hayes which was the first VA Sikh faith School to open in the country in the 1970s. Lady Singh leads on the educational aspects of the work of the NSO and is a current Ofsted inspector. The NSO are the DfE approved body to carry out Section 48 inspections in Sikh faith schools.

From scrutiny of the Headteacher Board (HTB) minutes from the meeting relevant to this decision, it can be seen from the August 2020 Agenda that an item to discuss and recommend an in-principle preferred sponsor for Khalsa Secondary Academy, Buckinghamshire, following the Termination Notice for the school. There is no further evidence in subsequent meeting documents that this discussion took place and whether a fair and equitable decision was made. **Was a decision made, or even discussed?** Greater clarity here would be beneficial.

5. Conclusions and questions

As Read and Bernal (2020) noted in their initial report, with only two Sikh schools being judged Inadequate by Ofsted in the period September 2017 to August 2020, it is not possible to perform statistical significance testing by comparing frequencies and proportions between Sikh schools and those of other religious designations (particularly those with an agreed MoU with the DfE) with regards Inadequate Ofsted ratings, school re-brokerages and conversions, or Notices to academies by the DfE. Read and Bernal are correct therefore, that there is no statistically significant evidence that Sikh schools have been treated differently by the DfE in respect to any of the above.

Despite this, it cannot be ignored that Khalsa Secondary Academy, a designated Sikh religious school, was **the only faith academy in England** to receive any kind of notice from the Department for Education during the first UK lockdown period of the pandemic (March to July 2020). Additionally, it was **the only academy in general to receive a Termination Notice** during the lockdown period; the other academies issued notices during this time received less severe warnings (i.e. Minded to Terminate and Termination Warning Notices). Prior to its inadequate Ofsted rating in 2019, Khalsa Secondary Academy had been graded as 'Good' and a monitoring visit, albeit online, was conducted in November 2020 which found no significant concerns. This suggests that the safeguarding issues were at least being dealt with if not overcome, as these must have been the primary basis for conversation during the discussions with the senior leadership team, including the senior leader responsible for safeguarding, the director of school improvement from Khalsa Academies Trust and the school's mental-health champion. The

Termination warning notice issued by the RSC on 4th June 2020 acknowledges the school's response to safeguarding through the creation of a 'Rapid Trust Improvement Plan for Keeping Children Safe' which sought to address the shortcomings in safeguarding practice identified by Ofsted and a safeguarding audit conducted by Anchored Schools which found safeguarding to be effective and that the school had implemented the short term recommendations from this audit.

Therefore, the timing of the Termination Notice needs to be thoroughly examined, both in terms of it seeming premature when a subsequent remote visit found no significant concerns, and it occurring during a period of national lockdown when the staff were struggling with the forced shift to online teaching, and many of the concerns were potentially not able to be acted on with children not present. **A full explanation of the timing and a justification for the decision would be welcomed.** We do note, however, the extent and gravity of the failings of Leadership and Management documented in the final Termination Notice of 4th June ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890326/Letter to Khalsa Academies Trust - TN Notice.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/890326/Letter_to_Khalsa_Academies_Trust_-_TN_Notice.pdf)).

Reid & Bernal's (2020) analysis highlighted that no Roman Catholic academy was re-brokered to another Trust in the period September 2017 – August 2020, despite six Roman Catholic academies being issued with notices from the Department for Education (4 Minded to Terminate Notices and 2 Termination Warning Notices). As stated above, due to the very low numbers of state-funded Jewish, Sikh and other minority religious schools found to be Inadequate by Ofsted in the specified time period, it has not been possible to make a meaningful comparison between the treatment of faith schools with an agreed MoU with the Department for Education (CofE and RC) and faith schools without an agreed MoU, but **the lack of clarity around the guidelines for re-brokerage, the opacity of the decision-making processes, and the potential protections against forced school closures and transfers that the Memoranda of Understanding appear to confer on Christian Trusts, all seem open to accusations of discrimination.** It is our strong recommendation that **further research into these three areas is conducted, and the decision-making processes and the support for RSCs in these decisions are clarified with some urgency.**

The case of the de la Salle Academy, which we investigated in section 4.1, illustrates this effectively: a school whose "pupils have been failed for far too long," whose "leaders and trustees have not done enough to improve the school" and where the "pupils' achievement is exceptionally low in too many subjects" has been allowed to remain open and potentially affect the life chances of its pupils since 2017 with nothing more severe than a Minded to Terminate Notice. In contrast, the Khalsa Academies Trust went through the MTN, TWN and full Termination Notice between 2nd December 2019 and 4th June 2020. **The extent to which the MoU between the DfE and the Roman Catholic Church has protected the de la Salle Academy from further repercussions is only a source of conjecture, but is clearly a source of possible resentment for those schools – of religious character and without – who do not have similar Memoranda of Understanding to support them.**

We do not feel we have enough information or the level of contextual understanding needed to contest the decision to terminate the funding agreement of the Khalsa Secondary Academy, although we do note that two independent initiatives have subsequently been instituted for Safeguarding at the school with an independent body judging the school's safeguarding practice to be effective prior to the Termination Notice being issued. **We do feel, however, that the evidence we have given throughout demonstrates a lack of equality between the treatment of the KSA and the de la Salle Academy**, leading us again to **question the power and appropriacy of the Memoranda of Understanding** we have discussed.

As we have noted previously, the numbers are so small that it is impossible to make any statements with any certainty. We do, however, want to re-raise the following key points from our report:

1. There is very little evidence to support the DfE's assumption that re-brokerage is effective in raising standards, and what research exists is inconclusive at best
2. What if re-brokerage is not effective? What then for academies who have been forced to undergo this process?
3. There does not seem to be any consistency in the level of Notice sent to schools and academies following an Inadequate grading
4. We could not find any advice for RSCs, not even anything as simple as a flowchart, to support their decision-making processes, nor those of the advisory Headteacher Boards
5. This level of subjectivity and opacity does not lead to confidence
6. To what level do the MoU between Catholic and CofE schools and the DfE allow protection to failing schools with Christian characteristics, and deny it to those schools without such MoU?
7. Is there effective representation within the composition of the Regional Schools Commissioners? Do they reflect the diversity of the UK population or local community for which they serve?
8. Do the RSC and the HTB understand the nuances of faith well enough to appropriately make decisions in the specific case of the Khalsa Secondary Academy?

Finally, we again reiterate again here **the need for greater clarity in the procedures of the Regional Schools Commissioners, particularly of the criteria used to re-broker schools**. In the light of our discussion on the levels of security enjoyed by Church schools through their Memoranda of Understanding, **we also repeat our own call for greater understanding of the seeming lack of equality for all schools** whose Trusts do not have such an MoU with the DfE, and whether these MoU affect decisions made in children's interests.

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MS & SM

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